

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-8392-2016
Date of Decision: 20.09.2019

Meenu Chauhan and another

...Petitioners

Versus

M/s Mittra Metal Co. and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Manhar S. Saini, Advocate for the petitioners.
Mr.G.S.Madaan, Advocate for respondents No.1 and 2.

ANIL KSHETARPAL, J.

This Court is called upon to quash criminal complaint No.3064 of 2015 titled as 'M/s Mittra Metal Company and others Vs M/s Emric Powers Solutions Pvt. Ltd and others', filed under Section 138 of the Negotiable Instrument Act, 1881 and all subsequent proceedings emanating therefrom in exercise of powers under Section 482 Cr.P.C.

Learned counsel for the petitioners has submitted that consignment bill is dated 11.12.2013 and the same is on the basis of agreement between two companies dated 29.06.2013 . He has further submitted that the cheque in question is dated 01.09.2015 signed by Arshad Kausar. He has further submitted that as per Annexure P-4 (colly) and Annexure P-5 i.e. Form No. DIR 12, petitioners had already resigned from the accused No.1-Company on 18.11.2013 and therefore, criminal prosecution against them cannot continue.

On the other hand, learned counsel for respondents No.1 and 2 , while drawing attention of the Court to various documents filed along with

the reply has submitted that the claim made by the petitioners is not correct. He, first of all, has submitted that accused No.1 is a closely held company of the family members. Meenu Chauhan-petitioner No.1 is sister-in-law of petitioner No.2. He has further drawn attention of the Court to Annexure R-3, where Nabhdeep Chauhan, who is husband of petitioner No.2 and brother-in-law of petitioner No.1 was nominated as a Director on 31.05.2014. It is Nabhdeep Chauhan, who had accepted the resignation of his wife (petitioner No.2 and sister-in-law of petitioner No.1) on 01.06.2014. He, hence, submitted that the claim of the petitioners that they had resigned on 18.11.2013 is not correct. He has further drawn attention of the Court to copy of form No. DIR 12 (Annexure P-5), where date of uploading has been mentioned as 31.05.2014. This uploading is under the digital signatures of petitioner No.1 under the capacity of Director of the Company. He went on to submit that a note on the form DIR-12 has been concealed from the Court, which is extracted as under:-

“this is e form has been taken on file maintained by registrar of companies through electronic mode and on the basis of statement of correctness given by the filing company.”

He has further submitted that the entire story of resignation has been coined just to save themselves from the criminal liability. He has submitted that it is the petitioners who are still managing the affairs of the Company and the alleged resignation is only an excuse to avoid prosecution.

Power under Section 482 Cr.P.C. can be exercised by the Court, if the Court is in a position to record firm that the criminal prosecution initiated is an abuse of the process of court. While deciding the petition under Section 482 Cr.P.C, the Court cannot go into the disputed questions of fact.

From the submissions made by learned counsel for the respondents No.1 and 2, it is apparent that there are more than one questions which need to be decided on appreciation of evidence. Still further, there is big difference between the company which is a closely held company of the family members and a big corporate entity. No doubt, the Hon'ble the Supreme Court in the case of *S.M.S Pharmaceuticals Ltd V. Neeta Bhalla, (2005) 8 SCC 89* has laid down after interpreting Section 141 of the Negotiable Instruments Act, 1881 that if a Director has resigned, such Director cannot be prosecuted. However, the facts of the aforesaid judgment passed by the Hon'ble Supreme Court would have no application.

This Court does not find itself in a position to record any firm finding. Hence, the present petition is disposed of, relegating the petitioners to the remedy before the Magistrate. Pending application(s), if any, shall also stand disposed of, in terms thereof.

20.09.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No